

ORIGINAL

ORDINANCE NO. 158

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON GRANTING A FRANCHISE TO PROVIDE CABLE TELEVISION SERVICE TO THE CITY OF SHORELINE TO TCI CABLEVISION OF WASHINGTON, INC.; ACCORDING TO THE TERMS OF THE ORDINANCE

WHEREAS, TCI Cablevision of Seattle, Inc. ("TCI") previously held Franchise No. 562 issued by King County, Washington to make use of streets and rights-of-way for the purposes of construction, operation, maintenance and reconstruction of a Cable Communication System in King County ("County") originally granted by Ordinance No. 547, on September 6, 1966; and

WHEREAS, TCI has continued to provide cable television services to the residents of Shoreline under the terms of the County franchise since the City's incorporation; and

WHEREAS, TCI's current Franchise is scheduled to expire; and

WHEREAS, the parties have negotiated a new Franchise agreement that meets the needs of the community; and

WHEREAS, it is in the public interest to provide TCI with a Franchise under the terms and conditions established by this ordinance;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON DO ORDAIN AS FOLLOWS:**

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FCC Rules Part 76, Subpart K	Clerk's Receiving No. 639
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Public Buildings	Clerk's Receiving No. 641
Survey Results	Clerk's Receiving No. 642

Section F1. Master Ordinance

This Franchise shall be a part of that certain Master Ordinance adopted by the Shoreline City Council of even date ("Ordinance"). Any capitalized terms not otherwise defined in this Franchise shall have the defined meanings set forth in the Ordinance. However, in the event of any conflict between the Master Ordinance, Ordinance No. 83, and this Franchise, this Franchise shall be the prevailing document.

Section F2. Purpose

This Franchise shall constitute an agreement between the City of Shoreline (hereinafter the "City") and TCI Cablevision of Washington, Inc. (hereinafter the "Operator"). The Operator promises to construct, maintain, and operate a Cable Television System for the distribution of Cable Service pursuant to the terms of this Franchise. For the purpose of this section, Cable Service is defined as (i) the one-way transmission to Subscribers of video programming or other programming service and (ii) Subscriber interaction, if any, which is required for the selection or use by the Subscriber of such video programming. The City agrees to grant the Operator all necessary rights and privileges to use public rights-of-way necessary for a Cable Television System. This agreement shall, as of its effective date, supersede and replace all existing franchises previously granted by the City of Shoreline to the Operator or any of its predecessors, subsidiaries or affiliated companies.

Section F3. Use Notification

If the Franchisee decides to use its System Facilities, or to lease any capacity on its System Facilities for any purpose other than providing Cable Service, it shall provide written notification to the City at least forty-five (45) days in advance of the commencement of said use, stating the

nature and scope of the new use, identifying entities other than the Franchisee involved in said use, and estimating additional revenue the Franchisee expects to derive from the new use.

Section F4. Length of Franchise

A. Original Term.

The length of this Franchise shall be for a term of five (5) years commencing on July 8, 1998 and terminating at midnight July 7, 2003. Provided, however, that the Operator has increased the Cable Television System's channel capacity to a minimum of approximately seventy-five (75) channels using fiber optic technology as well as the capacity to provide Internet access, the Franchise shall be extended for an additional four (4) year period.

At the end of this nine (9) year period, the franchise may be extended for yet another (and concluding) three (3) year period following a review by the City of the Operator's performance and/or response to the conditions set forth in Subsection B.

B. Conditions of Extension Beyond Original Term.

1. Review of whether the provisions for Public, Educational and Government (PEG) channels set forth in Section F19: Access Channels adequately meets the current community cable related needs and interests. Subsequent negotiations may result in an increase, decrease, or relocation of the access channels then available.
2. Review of the condition and status of the cablecasting equipment provided according to Section F21: Access Cablecasting Equipment to reflect the current state of the technology and to designate what obsolete and inoperable equipment should be replaced. At this time the sufficiency of the pass through amounts allocated for these purposes shall be reexamined and adjustments made as necessary.
3. Review of Section F17: Future Provisions to determine whether it continues to meet the goal of the franchise. Renegotiations may include potential changes in the trigger mechanism in light of the then competitive environment.
4. Review of the Franchisee's compliance with the material terms of the existing franchise and with applicable law; satisfactory service quality, including as it relates to signals, response to consumer complaints, and billing practices.

Section F5. Franchise Area

The Operator's service area shall be the entire incorporated area of the City, in its present incorporated form or in any later reorganized, consolidated, enlarged through annexation, or re-incorporated form ("Franchise Area"). In the event of any incorporation or annexation of any town or city which incorporates any portion of the Franchise Area, those portions shall automatically be removed from the description of the Franchise Area upon completion of such incorporation or annexation.

Section F6. Franchise Fee

The Operator shall pay to the City quarterly, on or before the forty-fifth (45th) day after the end of each quarter (March, June, September, December), a sum equal to the maximum percentage allowed by law (which is currently five percent (5%)), of Gross Revenues, for the preceding three calendar months. For the purposes of this Franchise, "Gross Revenues" shall mean all

three calendar months. For the purposes of this Franchise, "Gross Revenues" shall mean all revenues derived directly or indirectly by the Franchisee, or any other entity or affiliate of the Operator who would constitute a cable operator of the Cable Television System under the Cable Act, from the operation of the Cable Television System to provide Cable Service in the City including, but not limited to, revenue derived from Basic Cable Service, expanded basic service, premium and tiered Cable Services, installation and reconnection fees, leased channel fees, converter rentals, and advertising sales revenues. Gross revenues do not include refunds to Subscribers, amounts which cannot be collected by the Franchisee and are identified as bad debt (provided that if amounts previously represented as bad debt are collected, then those amounts shall be include in Gross Revenues for the period in which they are collected), transactions related to real property receipts, or any taxes on services furnished by the Franchisee imposed directly on any subscriber or user by the county, state or federal governmental unit and collected by the Operator on behalf of such entity. When the revenue of the Operator includes gross revenues from sources outside of the City, the Operator shall prorate the gross revenues among its sources by multiplying such gross revenues by a fraction the numerator of which is the number of Operator's Subscribers in the City and the denominator of which is the total number of all Operator's subscribers.

The City may modify the franchise fee if so permitted by federal and state law. Prior to implementation of any modification in franchise fees the Operator may request a public hearing by the City Council to discuss said modification. Following such a hearing the City Council may require the implementation of such modification in accordance with the provisions of this Ordinance.

A. Late Payment.

Any quarterly franchise fee not paid by the Operator within forty-five (45) days of the end of a quarter shall bear interest at the rate of twelve percent (12%), per annum or whatever maximum amount is allowed under State law, whichever is greater, from the due date until paid.

B. Financial Reports.

Each franchise fee payment shall be accompanied by a financial report in a form agreed to by the City and compatible with the Operator's computer system, showing the basis for the Operator's computation, including, revenues received by the Operator within the City from such items as Basic Service, expanded Basic Service, pay TV service, other applicable sources of revenue, and such other information directly related to confirming the amount of the Operator's Gross Revenues as may be reasonably required by the City.

C. Audit by City.

The Operator shall provide, at a business office located within fifty (50) miles of the City, all financial records of the Operator necessary for the enforcement and administration of this Franchise by the City. The City may inspect, at the Operator's local business office, the books and records of the Operator during normal business hours, for the purpose of ascertaining the actual Gross Revenues for the previous year collected by the Operator and for otherwise enforcing the terms of this Franchise. In the event that such audit discloses a discrepancy of more than ten percent (10%) between the financial report submitted by the Operator with a quarterly franchise fee payment and the actual quarterly Gross Revenues collected by the Operator, the Operator agrees to reimburse the City for

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the City's actual costs of such audit. If no material discrepancies are found, the City agrees to close the audit within six (6) months. In the event that such audit results in a determination that additional franchise fees are due the City, the Operator further agrees to pay interest as required for late payments on such additional franchise fees computed from the date on which such additional franchise fees were due and payable. In the event that such audit results in a determination that an overpayment of franchise fees was made to the City, the overage shall be reimbursed to the Operator within sixty (60) days of the closing of the audit so that a refund may be made with due haste to the Operator's Subscribers.

D. Non-Waiver.

Acceptance of any franchise fee payment by the City shall not be construed as an agreement by the City that the franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the City be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of this Ordinance.

E. Taxes.

Nothing in this Section shall limit the Operator's obligation to pay applicable local, state, or federal taxes.

Section F7. Technical Standards

A. Subject to federal, state and local law, the Operator shall comply with FCC rules, Part 76, Subpart K, Section 76.601 through 76.610, a copy of which has been filed with the City Clerk and is identified by Clerk's Receiving No. 649, and as may be hereafter amended by the FCC, and, at the minimum, the following:

1. Applicable City, state and national/federal codes and ordinances;
2. Applicable Utility Joint Attachment Practices;
3. The National Electric Safety Code; ANSI C2;
4. City Utility Code Requirements;
5. City rights-of-way procedures;

The Operator shall notify the City prior to the date of the semi-annual FCC Proof of Performance Test so that the City, as is its right under the pertinent FCC regulations, may, at its option, monitor the taking of such tests. The Operator shall provide a copy of the results of the System evaluation to the City upon request.

- B. The Cable System must have back-up power supplies capable of providing power to the System for two hours in the event of an electrical outage.
- C. All closed caption programming retransmitted by the System shall include the closed caption signal. The Operator shall provide a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited. For hearing impaired customers, the Operator shall provide information concerning the cost and availability of equipment to facilitate the reception of Basic Services for the hearing impaired.

- D. In addition the Operator must have TDD/TTY (or equivalent) equipment at the company office, and a telephone number listed on Subscriber bills, in local telephone directories and with directory assistance for such equipment, that will allow hearing impaired customers to contact the company.

Section F8. Technical Evaluation

If the City wishes to review the Cable System's performance, it shall provide ten (10) business days' prior written notice to Operator. During such evaluation session, the Operator shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may require to determine the Operator's compliance with its Franchise.

If the City has concerns because of reoccurring problems with the Operator's Cable System it may retain an independent consultant to conduct an analysis of the Cable System and its performance and submit a report of such analysis to the City. The City or its consultant shall provide thirty (30) days prior notice to the Operator of any testing of the Cable System, in accordance with federal law. The City shall take into consideration any efforts taken to correct such deficiencies.

The report prepared by the consultant in response to the City's request for a System evaluation shall include:

1. A description of the technical problem in Cable System performance which precipitated the special tests;
2. What Cable System components were tested;
3. The equipment used and procedures employed in testing;
4. The method, if any, by which specific performance problems may be resolved;
5. Any other information pertinent to said tests and analyses which may be required by the City.

If the tests indicate that the System is not in compliance with FCC standards or the requirements of the Franchise, the Ordinance or other applicable law, the Operator shall reimburse the City for any costs involved in conducting such tests, such as consultant fees or other expenses.

Section F9. System Upgrade

Within twenty-four (24) months and in accordance with Section F10: Construction Information and Schedule, the Operator shall physically rebuild, upgrade or, otherwise modify its Cable System to be capable of transmitting at least seventy-five (75) video programming choices to Subscribers plus an architecture which can support in excess of twenty (20) additional programming options including Internet access. A rebuild, upgrade or modification of the Cable System shall be one means of satisfying this requirement. The Operator may initially utilize alternative technologies (including compression or servers) to deliver such programming choices and options. No later than four (4) years from the date of this franchise, however, the operator shall have upgraded the system using fiber optic technology.

Section F10. Construction Information and Schedule

Construction information and a construction schedule shall be submitted to the City in accordance with the City's permitting process. Operator shall commence construction according to the construction schedule within six (6) months of the acceptance of this Franchise. Following construction and activation and throughout the term of the Franchise, at least seventy-five (75) programming service choices must be able to be delivered on the System without additional construction activity or the addition of any further electronic equipment to the System.

Section F11. Reports

The Operator shall furnish, upon written request made by the City not more often than once each calendar year, a report of its activities as appropriate. Such report shall include:

1. Most recent annual report.
2. A copy of the 10-K Report, if required.
3. The number of homes passed by Operator's cable.
4. The number of Subscribers with Basic Service.
5. The number of Subscribers with expanded Basic Service.
6. The number of Subscribers with premium services.
7. The number of Pay-per-View purchases.
8. The number of installations in the period.
9. The number of disconnects in the period.
10. Total number of miles of cable in the City.
11. A summary of all written complaints received by category, length of time taken to resolve and action taken to provide resolution.
12. Copies of all FCC complaint logs.
13. A statement of its current billing practices, and a sample copy of the bill format.
14. A current copy of its Subscriber service contract.
15. A current copy of its cable rate card delivered to Subscribers.
16. Report on operations - Such other reports with respect to its local operation, affairs, transactions or property as are necessary to monitor compliance with this franchise and the law.

Section F12. Periodic Meetings

Upon request, but not more often than annually except in extraordinary circumstances, the Operator shall meet with designated City officials and/or designated representative(s) to review the performance of the Operator under this Franchise for the preceding period. The Operator shall be given not less than thirty (30) days' prior written notice of any such meeting. The subjects may include, but are not limited to, those items covered in the periodic reports and performance tests.

Section F13. Customer Service

The Operator shall at all times be in compliance with FCC Customer Service obligations 76.309, Subpart II, a copy of which has been filed with the City Clerk and is identified by Clerk's Receiving No. 640, as now existing or as may be amended, which standards are incorporated into this Franchise by reference ("FCC Customer Service Standards"). The City reserves the right to enact or enforce any customer protection law, containing more stringent standards, to the extent not specifically preempted by the FCC in 47 CFR _76.309.

Section F14. Telephone Response

In order that the City may be informed of the Operator's success in achieving satisfactory customer relations in its telephone answering functions, the Operator shall, upon the completion of the upgrade and thereafter upon written request by the City, not more often than once each calendar quarter, provide the City with a summary that will provide, at a minimum, the following information for the immediately preceding calendar quarter:

1. Number of calls received per hour;
2. Time taken to answer;
3. Average talk time;
4. Number of calls abandoned by the caller;
5. Average hold time;
6. Percentage of time all lines busy.

The Operator shall have not less than forty-five (45) days to prepare and submit the report. This data will be compared to minimum standards of the FCC Customer Service obligations 76.309, Subpart II or as amended incorporated herein by reference.

Calls for service generated during periods of system outages which effect more than twenty-five (25) customers may be noted separately.

The City shall retain the right to require additional information, beyond that provided in the Operator's quarterly report, on calls noted separately from the service level calculations.

Section F15. Failure to Improve Customer Service

The City or its designee shall review telephone response and customer service information with the Operator. It will be assumed that improvements will be made by the Operator in the areas of non-compliance with FCC standards from the last reporting period. Failure to do so may result in the calling of a public hearing by the City Council for the purpose of examining the reasons, if any, why such improvements were not achieved by the Operator.

Section F16. Refunds for Outages

After notification from a Subscriber of an outage Operator will credit the Subscriber's account, upon request, if the Subscriber was confirmed without service for a period exceeding twenty-four (24) hours provided Operator is notified by the Subscriber within thirty (30) days.

Section F17. Future Provisions

Because of the quickening pace of electronic communication development it is essential that the City be provided with such new features when they become technologically and economically feasible. While such potential Cable Services are too numerous to enumerate, they may include, but not be limited to, computer interaction, interactive video on demand, interactive shopping, and similar developments. Recognizing that these types of services are not generally available at the present and that the City's future Franchise term expiration may not coincide with the advent of such services, the City shall require that these features be made available to the City within twenty-four (24) months of one or more of the following occurrences:

1. Fifty-one percent (51%) of other franchised areas in the King County area in Washington state have been furnished such services by the Operator or its successor company.
2. Any adjacent community has had these features made available to its Subscribers by any Cable Service provider for a period of at least two (2) years.

However, prior to the implementation, the Operator may request a public hearing to review the cost/benefit to the City's Subscribers of such options. The City Council then, at its discretion, may require the activation of such feature(s), extend the time requirement, or postpone the event until further hearing.

Section F18. Allowable External Franchising Costs

At least sixty (60) days prior to incurring any expense to fulfill the obligations set forth in Section F20: Access Interconnection, Section F22: Public Buildings or Section F23: Institutional Networks, the Operator shall present to the City a written proposal setting forth the method, objective, and cost involved in implementing such requirement(s). The City may take up to ninety (90) days to consider the merits of such proposal(s). If the City has not notified the Operator to the contrary, or responded within this period, the Operator may commence the project and itemize the concomitant costs in accordance with 47 CFR 76.922. The City shall have the authority to excuse, by written notice provided within the ninety (90) day review period, the Operator's obligation to perform such franchise required activity for a specific period of time.

Section F19. Access Channels

Upon written notification by certified mail, within sixty (60) days of the completion of the upgrade except as provided by Paragraph C below, unless such time is extended by the City, the Operator shall make the following Public, Educational and Government (PEG) access channels available to the City and/or its residents:

A. Public Access.

One (1) channel. The City may, at least initially, elect to share the channel with other neighboring communities. However, subsequent to the furnishing of such channel, the formula outlined in Paragraph D below for provision of additional channel(s) shall be applicable whether used solely or in tandem. The City, or designee, shall adopt policies to determine programming eligibility for this channel.

B. Educational Access.

One (1) channel upon the request of the City Council for the purpose of cablecasting educational programs from the local school System, community colleges or the University of Washington.

C. Local Government Access.

One (1) channel for the purpose of cablecasting programming initiated by the City government including, but not limited to, City Council hearings, public safety programs, committee and commission meetings, and community bulletin board announcements.

The following additional specific time elements and service commitments shall apply to the Local Government Access channel:

1. The Operator shall, within 6 months of the date of the Franchise and without charge, provide the necessary telephone lines and channel capacity to cablecast character generated signals to Shoreline Subscribers until such time as the requirements of Section F19(C)(3) have been satisfied.
2. The Operator shall, within 60 days of the date of the Franchise, cablecast such video tape of City Council meetings as delivered to the Operator's headend for recablecast.
3. No later than eighteen (18) months from the date of the Franchise or upon the completion of the upgrade, whichever is the earlier, the Operator shall provide a separate dedicated channel and supporting infrastructure necessary to provide taped and/or live cablecasts from City Hall or a location designated by the City, to the Operator's subscribers within Shoreline.

D. Additional Channels.

Up to four (4) additional channels for Public, Education or Government shall be made available when the channel is used for access purposes with programming (excluding character generated and filler programming, e.g. NASA, AM/FM radio programming) during fifty percent (50%) of the hours between 10:00 am and 10:00 PM, during any consecutive ten (10) week period. Except for character generated announcement, the programming of additional channels required shall be distinct and non-repetitive of the previous channel. Character generated announcements, however, which may be cablecast on additional channels which are duplicative of those on another channel shall not be counted towards the total channel usage. Based upon this criterion the Operator shall, within six (6) months following a written request by the City, provide another designated access channel for this purpose.

E. Channel Reversion.

If, after one year of operation channel(s) activated under the terms of paragraph D is not programmed at least twenty-five percent (25%) of the hours between 10:00 a.m. and 10:00 p.m., the channel shall then revert to the Operator for its unrestricted use within the terms and conditions of this ordinance. The Operator shall give the City a minimum of six (6) months notice of its intention to withdraw any such channels. The channel, however, shall not revert if, during this caution period, the channel fulfills the requirements as discussed above. The reversion will be for a minimum of two (2) years.

After this period the City may re-acquire such channel(s) upon demonstrated demand that it will fulfill the conditions of programming usage.

Section F20. Access Interconnection

Within six (6) months of the effective date of this agreement each of the present operators shall make mutually satisfactory arrangements for interconnection between their two systems for the purpose of carrying Public, Educational and Government (PEG) cablecasting throughout their respective systems.

Section F21. Access Cablecasting Equipment

The City wishes to preserve its options to provide local cablecasting either via local programming from a temporary or permanent City Hall location, or other location. Upon request, the Operator shall provide the City with a cost estimate for the furnishing of such equipment and facilities necessary to implement said cablecasts. If it is determined by the City Council that the costs are necessary and reasonable, then the City shall authorize the Operator to proceed with the purchase, and obtain reimbursement through the imposition of a charge of up to \$.15 per month per subscriber.

Additionally the City may wish to obtain monies in order to participate in regional public access activities during the period of the franchise. Upon the City's request, the Operator shall make a further assessment of up to \$.15 per month per subscriber.

Funds collected shall be made available within sixty (60) days of written request by the City. These expenditures may be considered as external costs allowable under 47 CRF 76.922.

Section F22. Public Buildings

The Operator shall provide Basic Service without charge for installation or monthly rate to such public buildings and schools as specified in the list of Public Buildings, a copy of which has been filed with the City Clerk and is identified by Clerk's Receiving No. 641, in its present franchise area as well as other such public buildings that may be constructed or acquired during the period of the Franchise that are passed by cable and within three hundred (300) feet of the trunk or distribution System.

Section F23. Institutional Networks (I-Nets)

A. Construction.

Upon request, the Operator shall, in accordance with specific agreements and plans to be developed by the City and the Operator, construct an Institutional Network (I-Net) to link public facilities designated by the City with bi-directional video, data and audio signals. The I-Net shall be for the purpose of non-commercial, governmental closed-circuit use and other institutional communications not normally transmitted via the subscriber network system.

B. Parameters.

The I-Net shall be constructed in accordance with agreements and plans developed by the City and the Operator. The following parameters shall apply to such agreements, unless mutually agreed otherwise by the parties:

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1. Any charges by the Operator to the City for construction of the I-Net or I-Net interconnections shall not exceed the incremental cost to the Operator, i.e., the actual cost of constructing the I-Net over and above the cost of constructing the Operator's Cable System for its own use.
2. There shall be no charge by the Operator to the City or to other public users for the use of the I-Net.
3. The Operator shall cooperate with the City to ensure the most cost-effective construction of the I-Net.
4. Management and control of I-Net transmissions shall be the responsibility of the City or its designee up to a point of demarcation to be jointly determined by the City and the Operator at a later date. The Operator shall make technical assistance available, at a time and materials cost to the City, beyond the point of demarcation, to ensure the effective and reliable operation of the I-Net.

C. Internet Alternative.

In lieu of providing the closed interconnection specified above, the Operator and City may mutually elect to provide access to the Internet to accomplish these objectives. In this case the Operator shall provide, without charge, a cable modem, or an ethernet card, and any software necessary for access to such service, or until such time as such equipment is available, telephone equipment and lines for this purpose. There shall be no charge for unrestricted usage during business hours. The using facility shall be responsible for the provision, maintenance, updating and replacing as necessary any other hardware such as a personal computers and related equipment required for access to such service, as well as the cost of installing additional outlets if so requested. Further, the Operator shall not be obligated to provide such service to any using facility unless the using facility agrees to, on a form as approved by the City, take reasonable precautions to prevent any inappropriate or illegal use of such service, and agrees to hold the Operator harmless against and from all claims, demands, costs or liabilities of every kind and nature whatsoever arising out of use of such service within the using facility, including, but not limited to, reasonable attorneys' fees and costs.

Section F24. Access and I-Net Cost Review

At the time of the Periodic Meetings (F12), a review will be made of the current status of costs incurred and future estimates of moneys required to complete the projects undertaken in Section F21: Access Cablecasting Equipment and Section F23: Institutional Networks including the cost of moneys expended. At that time adjustments to the per subscriber charge shall be made as required. This does not preclude either the Operator nor the City from requesting an analysis of ongoing costs when deemed necessary by either party.

Section F25. Coverage

Subject to the density considerations in Section F26: Cable Availability, the City shall be provided with Cable Service in the entire Franchise Area, provided that the Operator shall not be required to provide Cable Service to areas of the City served by another operator. If such a condition does not now exist in its present franchise area, the Operator shall complete such wiring and be in a position to offer Cable Service to all residents within six (6) months of the

effective date of the Franchise. Areas subsequently annexed shall be provided with Cable Service within twelve (12) months. In those areas which are adjacent to an unbuilt area, the Operator with the nearest trunk and/or distribution line will be responsible to furnish cable service.

Section F26. Cable Availability

Subject to the additional operator exception in Section F25: Coverage, Cable Service shall be available to all residents within the City provided there are at least thirty-two (32) dwelling units per street mile.

Section F27. Extraordinary Installation Charges

All residents requesting Cable Service and living within one hundred fifty (150) feet of existing cable distribution or trunk lines shall have the cable installed at the prevailing published installation rate.

In the event a request is made for service and the residence is more than one hundred fifty (150) feet from an existing cable distribution or trunk line, such installation shall be completed on a time and material cost basis for that portion of the service line extending beyond one hundred fifty (150) feet per home.

In the event a request is made for service by a resident(s) living in an area not meeting such density criteria in accordance with Section F26: Cable Availability, the Operator shall make its best efforts to notify the City for its assistance in identifying other interested residents in the area, and shall enter into a contractual agreement with the resident(s) requesting service wherein the Operator shall be reimbursed for its actual construction costs. In such instance, upon request, but for no more than a three (3) year period, the Operator shall make a pro-rata refund if and when additional dwellings are serviced by the same distribution line.

Section F28. Blanket Permit Definitions

In accord with Section M10 of Shoreline City Ordinance No. 156, a copy of the Blanket Permit Definitions applicable to the Operator have been filed with the City Clerk and are identified by Clerk's Receiving No. 644.

Section F29. Program Selection

Survey Results, a copy of which have been filed with the City Clerk and identified by Clerk's Receiving No. 642, are the results of a survey taken by the City of Shoreline indicating broad subscriber preferences in program selection. The City urges the Operator to give high priority to these opinions when considering channel program changes, additions or deletions. The City may also in the future share in the taking of such opinion polls with the Operator.

Section F30. Penalties

The City shall notify the Operator in writing by certified mail stating the nature of a perceived failure to comply with material conditions of the Franchise and setting forth a reasonable time in which the Operator will be allowed to rectify such alleged improper condition. The Operator may request an extension of time if construction is suspended or delayed by the City, or where unusual weather, natural consequences (e.g. earthquakes, floods, etc.), extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of the Operator delay progress or impair performance, provided that the Operator has not, through its own actions or

inactions, contributed to the delay. The amount of additional time allowed will be determined by the City. The extension of time in any case shall not be greater than the extent of the actual non-contributory delay experienced by the Operator.

Failure of the Operator to correct these deficiencies, except in those circumstances cited above may result in the City calling a hearing to determine if a violation of the Franchise has occurred in accordance with Section M29: Revocation for Cause of the Master Ordinance.

If, following such hearing, it is determined by the City Council that the Operator has failed to comply with the schedule set forth in the Franchise, monetary penalties of up to five hundred (\$500.00) per day will be imposed for each day beyond thirty (30) days that the Operator has not fulfilled the requirement(s).

Monetary penalties may be assessed for the following:

1. Failure to conform to customer service standards as required by, Section F13: Customer Service.
2. Upgrade and features as required by Section F17: Future Provisions.
3. PEG access channel allocations as required by Section F19: Access Channels.
4. Provision of equipment and funds for government access broadcasting as required by Section F21: Access Cablecasting Equipment.
5. Coverage of existing and future annexed areas as required by Section F25: Coverage.
6. Failure to implement interconnection with other franchisee(s) as required by Section M21: City-wide Public, Educational and Government Access Interconnection.

Monetary penalties may be assessed retroactive to the date that notification was provided to the Operator in such cases where the Operator has been non-responsive in correcting the situation or in the case of flagrant violations. If payment of any of these penalties is delinquent by three (3) months or more, the City may require partial or total forfeiture of the performance bond or other surety.

Section F31. Insurance

The Operator shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury, and property damage. The Operator shall provide a Certificate of Insurance designating the City as an additional insured. Such insurance shall be noncancelable except upon thirty (30) days' prior written notice to the City.

Section F32. Independent Contractors

This Franchise shall not be construed to provide that the Operator is the agent or legal representative of the City for any purpose whatsoever. The Operator is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner whatsoever.

Section F33. **Acceptance**

This grant of Franchise and its terms and provisions shall be accepted by the Operator by the submission of a written instrument, executed and sworn to by a corporate officer of the Operator before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Franchise. Such instrument shall evidence the unconditional acceptance of this Franchise and the promise to comply with and abide by all its provisions, terms and conditions.

Section F34. **General Provisions**

A. Entire Agreement.

This Franchise contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Franchise and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.

B. Modification.

No provision of this Franchise may be amended or added to except by agreement in writing signed by both of the Parties.

C. Full Force and Effect.

Any provision of this Franchise which is declared invalid, void or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

D. Assignment.

Operator shall not have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior consent of the City, other than to an entity controlling, controlled by, or under common control with the Operator. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Operator in the Franchise or Cable System in order to secure indebtedness. Any assignee shall, within thirty (30) days of the date of any approved assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise.

E. Attorney Fees.

In the event the City or the Operator defaults on the performance of any terms in this Franchise, and the Operator or the City places the enforcement of the Franchise or any part thereof, or the collection of any monies due, or to become due hereunder, in the hands of an attorney, or file suit upon the same, each party shall pay its own costs, including reasonable attorneys' fees, costs and expenses. The venue for any dispute related to this Franchise shall be in a court of competent jurisdiction.

F. No Waiver.

Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

H. Authority.

Each individual executing this Franchise on behalf of the City and Operator represents and warrants that such individuals are duly authorized to execute and deliver this Franchise on behalf of the Operator or the City.

I. Notices.

Any notices required to be given to the City or Operator or by Operator to the City shall be delivered to the parties at the following addresses:

OPERATOR:

TCI Cablevision of Washington, Inc.
1140 N. 94th
Seattle, WA 98103
Attn: General Manager

CITY:

City Manager
City of Shoreline
17544 Midvale Ave. N.
Shoreline, WA 98133

WITH COPY TO:

TCI Cablevision of Washington, Inc.
P.O. Box 91220
Bellevue, WA 98009-9220
Attn: Legal Department

Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth herein, unless specifically directed otherwise. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

J. Captions.

The respective captions of the Sections of this Franchise are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Franchise.

K. Time of Essence.

Time is of the essence of this Franchise and each and all of its provisions in which performance is a factor.

L. Remedies Cumulative.

Any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

Section F35. Severability

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section F36. Ratification

Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section F37. Effective Date

This Ordinance shall be in full force and effect thirty (30) days after its passage.

PASSED BY THE CITY COUNCIL ON JUNE 8, 1998.



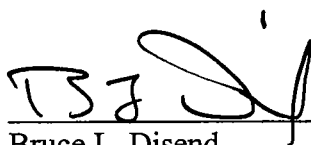
Mayor Scott Jepsen

ATTEST:

APPROVED AS TO FORM:



Sharon Mattioli, CMC
City Clerk



Bruce L. Disend
City Attorney

Date of Publication: June 15, 1998
Effective Date: July 8, 1998